

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ERICA GARCIA

Claimant

VS.

CARGILL MEAT SOLUTIONS CORP.

Respondent

AND

AMERICAN INT'L SOUTH INSURANCE

Insurance Carrier

Docket No. **1,036,785**

ORDER

Claimant requests review of the December 19, 2007 preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

The Administrative Law Judge (ALJ) found claimant did not sustain her burden of proof that her fall at work arose out of her employment. The ALJ found it was more probably true that the fall was caused by a personal condition. The ALJ further found that claimant failed to establish that any of the conditions she is seeking treatment for are related to or aggravated by the fall as the symptoms pre-existed the fall. Consequently, the ALJ denied claimant's request for benefits.

Claimant requests review of whether her accidental injury arose out of her employment. Claimant argues she has sustained her burden of proof and therefore the ALJ's Order should be reversed.

Respondent argues that claimant's personal (fainting) condition preexisted her fall. Respondent further argues the uncontradicted medical evidence establishes that claimant's fall at work was caused by a personal condition and that her subsequent complaints were not related to the fall. Consequently, respondent requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Tami Myers, respondent's registered nurse, testified claimant came to her office on August 4, 2007, complaining of a severe headache and blurry vision. An ice pack was applied to the back of claimant's head because of some swelling. Claimant told Ms. Myers that she had fallen earlier in the day at home while playing with her daughter. Claimant's mother had found her unconscious due to the fall at home. Wendy Aguero, respondent's safety, ergonomics and engagement team leader, testified that on August 4, 2007, she was also present when claimant was in the nurse's office and claimant had explained to her that she had been playing with her daughter and either slipped and fell or passed out. Claimant denied she said she had fallen or passed out.

Ms. Myers advised claimant to seek medical treatment with her personal physician before returning to work. On August 6, 2007, Ms. Myers called claimant into her office to see if claimant had sought medical treatment over the weekend. Claimant stated that she had sought treatment at the emergency room and was released.

Claimant returned to work on Monday, August 6, 2007, and worked the whole day. She doesn't remember talking to the nurse or anything. She reported to work on Tuesday, August 7, 2007, and worked the whole day feeling good. Claimant returned to work on Wednesday, August 8, 2007, and she said as she was getting up from the chair where she worked her foot got caught on the chair causing her to fall. She stated that she did not remember much after that other than the chair fell on top of her. A co-worker, Jack Barela said he saw claimant stand up and then fall when her foot caught on the chair. He further stated her hard hat came off and the chair fell on top of claimant.

Other co-workers who came to claimant's aid said claimant still had her hard hat on as she lay on the floor and that the chair remained in an upright position. When claimant was taken into the nurse's station the nurse and other co-workers assisting in the nurse's station agreed claimant still had her hard hat on and it was removed in the nurses station. An ambulance was summoned and claimant was transported to the Western Plains Medical Complex emergency room.

The Ford County Fire & EMS Department Patient Report, dated August 8, 2007, contained a history that respondent's staff noted claimant had passed out and fallen. The Emergency Physician Record likewise noted claimant had a syncope (loss of consciousness) episode at work and had fallen. But it is significant to note that record further noted the patient was the historian who provided that information. Claimant was also listed as the historian on the Triage/Surgical Nursing Assessment and again stated she had suffered a syncopal episode at work. Claimant was examined and released to go home. The next day claimant was transported back to the emergency room after she suffered what her parents described as a seizure. She was examined and released but later that evening an ambulance was again called and she was returned to the emergency room. Claimant was then taken by helicopter to Wichita where she remained for several days. Ultimately, it was determined claimant was not having seizures.

At the request of respondent's attorney, Dr. Charles E. Bain reviewed claimant's medical records as well as the depositions of the witnesses in this claim. Dr. Bain noted the fact that claimant was still wearing her hard hat after her fall made it highly unlikely that she sustained a head injury. And that when a head injury is suffered there is almost always a loss of memory for the events immediately surrounding the injury but claimant had a detailed recollection of events. Dr. Bain opined that it was likely that claimant's symptoms were due to pseudoseizures (psychogenic nonepileptic seizures, behavioral paroxysms) due to significant psychological stressors in her life.

Moreover, the diagnostic testing including an MRI of her head and an EEG were normal. Dr. Malaz Almsaddi, a neurologist, concluded claimant's history was not suggestive of a seizure despite her subjective complaints. In short the medical evidence compiled to date simply does not support her complaints or that she suffered a head injury in the fall.

For a claim to arise "out of" employment, its cause or origin must develop out of the nature, conditions, obligations and incidents of employment.¹ Claimant argues that she tripped on the chair at work and that caused the fall. The difficulty with that version of events is that the contemporaneous medical records indicate that claimant initially provided a history that she fainted and then fell. And while it is true that Mr. Barela provided testimony supporting claimant's version, nonetheless, his testimony is suspect in that he mirrors claimant's testimony that she tripped, fell, her hard hat came off and the chair fell on top of her. That testimony was contradicted by the other co-workers who assisted claimant in that those witnesses noted claimant's hard hat was in place until taken off in the nurse's station and the chair remained upright. And there is evidence that when claimant discovered her claim was being denied she approached a co-worker, Sara Dominguez, and requested that she provide false testimony that she had seen claimant fall down. Claimant's credibility was further impeached when she denied specific medical problems that were then revealed in her medical records.

Where an employment injury is clearly attributable to a personal condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award is granted.²

The ALJ analyzed the evidence in the following fashion:

Some of the medical evidence states that the claimant has adjustment disorder with depressed mood. That stressors in her life are the cause of her seizure like

¹ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 689 P.2d 837 (1984).

² *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992).

symptoms. It is clear that the symptoms and problems that she is experiencing subsequent to her alleged accident of August 8, 2007, pre-existed that date. The MRI examination subsequent to her alleged accident showed no definite seizure focus identified. All other tests were within normal limits. The claimant was referred for psychiatric testing and management.

That claimant's request for medical treatment, payment of medical bills and temporary total disability is hereby denied. The claimant has failed to meet her burden of proof that her accidental injury (her fall) was work related. It is more probably true than not, that her fall was caused by her personal conditions. Further, she has failed to prove that any of the conditions for which she is seeking treatment is related to the fall or aggravated by it. Her symptoms pre-existed her fall and she had sought medical treatment for them previously.³

This Board member agrees and affirms.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding of this Board Member that the Order Denying Medical Treatment of Administrative Law Judge Pamela J. Fuller dated December 19, 2007, is affirmed.

IT IS SO ORDERED.

Dated this 29th day of February 2008.

DAVID A. SHUFELT
BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant
Stanley R. Ausemus, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier

³ ALJ Order (Dec. 19, 2007) at 2.

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2006 Supp. 44-555c(k).

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Pamela J. Fuller, Administrative Law Judge